

Discussion and Possible Adoption of Proposed Changes to the COA Procedures Manual February 2013

Background

In the course of the COA's work, committee members are sometimes faced with making decisions regarding an institution with which they are or have been affiliated. This occurs generally for accreditation site visits at an institution and when the institution proposes a new program or a change in status for an existing program. When this occurs, the committee member recuses himself/herself from the discussion and vote. Past practice has been that, for accreditation decisions about the institution, the committee member then sits in the audience section of the room until that agenda item has been concluded. Past practice for decisions about approving new programs at an institution, the COA member simply recuses him or herself from the discussion and vote, but does not necessarily remove him/herself physically from the table.

At the last COA meeting, staff reported that changes to that practice may be necessary based on very preliminary discussions with the Commission's legal staff. Specifically, the question was raised as to whether a Committee member should leave the meeting room altogether after he or she has recused him/herself from the discussion and vote on an institution's accreditation status. Staff noted that additional research would be done and this item would be brought back to the COA for further discussion.

Staff has completed additional research on this topic and presents for COA discussion and possible adoption, proposed changes to the *COA Procedures Manual*, and hence, to standard COA practice. A copy of the current *Procedures Manual* can be found at the following link: <http://www.ctc.ca.gov/educator-prep/coa-files/COA-Procedures-Manual.pdf>.

Issues Identified

The information listed below was informed by discussions with the Commission's legal counsel. All discussions were informal and based on hypothetical situations and do not represent a formal legal opinion.

In essence there are three questions that the COA members should discuss:

- 1) Does the COA member who recuses him or herself from a vote on an accreditation site visit need to leave the room until after the discussion and vote on that agenda item?
- 2) Can a member of the COA address the COA as a member of the public?
- 3) Can a member of the COA, whose institution's report is being discussed, serve as a representative of the institution?

Each of these is discussed briefly below.

1) Does the COA member who recuses him or herself from a vote on an agenda item regarding an accreditation site visit need to leave the room until after the discussion and vote on that agenda item?

Generally, a COA member is not legally required to leave the room during the discussion and vote on an institution for which he or she has a conflict of interest. A conflict of interest, in the eyes of the law are one in which there is a **financial** conflict of interest. For instance, a clear conflict of interest would be if a COA member is an employee or contractor of the institution.

Although there is no legal mandate to leave the room, there could be a perception that the individual's (COA member's) mere presence in the room has an undue influence on one or more members of the body. While this may be in perception only, it could have an impact on the voting behavior of other members.

That said, the COA could consider changes in its current practice and *Procedures Manual* to require COA members to leave the room when an institution with which a committee member has a conflict of interest comes before the commission for accreditation after a site visit or revisit.

Section 702 Presentation of Accreditation Team Reports (page 20) of the COA *Procedures Manual*, item number 2 currently states:

2. If any COA member must recuse himself/herself, he/she should note this for the record and sit away from the meeting table.

The COA could change the text to read:

2. If any COA member must recuse himself/herself, he/she should note this for the record and *remove himself/herself from the room for the duration of the agenda item.*

Further, in section 1201 (page 32), the *Procedures Manual* currently states:

If the recusal is for the accreditation of an institution, the Committee member will remove themselves from the table. The Committee member may remain in the room for the duration of the discussion and action.

The COA could change the text to read:

If the recusal is for the accreditation of an institution, the Committee member will *remove themselves from the room for the duration of the discussion and action.*

2) *Can a member of the COA address the COA as a member of the public?*

Section 1201 of the *Procedures Manual* reads as follows:

ADDRESSING THE COMMITTEE

If the individual who has recused him or herself from the discussion wishes to address the Committee on the item from which he or she has recused, he or she must do so as a member of the public. The individual may not address the Committee on matters related to the institution until he or she has recused him or herself and is called upon as a member of the public by one of the Co-Chairs at the appropriate time.

Recent informal conversations with legal staff suggest a change is needed in this section of the *Procedures Manual*. A member of a public body is **not** allowed to address the same body as a member of the public, with very few exceptions. These exceptions include situations in which a body is considering an act that has a direct impact on the member's personal interests. One example of this is if a City Council is considering a new zoning ordinance that would impact a member of that Council's personal property. In that case, the member of the City Council does not give up his right as a citizen to address the board simply because he sits on that board.

However, in general, the concept that a member of a public body may not speak as a member of the public before that public body is recognition that the individuals serving on the public body may have different relationship and power status than individuals that do not serve on the public body with members on that public body. Further, it is noted in many instances, the information that the member wishes to share as (a member of the public) or that he or she possesses is, in fact, the result of that person's position not as a member of the public but as a representative of another interest or institution.

The Commission could consider the following changes to the *Procedures Manual*:

An individual who has recused him or herself from the discussion and vote of an accreditation site visit or revisit may not address the Committee on matters related to the institution, even as a member of the public.

3) *Can a member of the COA, whose institution's report is being discussed, serve as a representative of the institution?*

Again, the presence of the individual as member of the public body may influence the other members of that public body. From time to time, the situation could occur that the institutional representative before the COA for an accreditation site visit is a member of the COA.

One of the ways that this situation could be avoided is if the institutional representative is not the same individual as the individual who serves on the COA. In other words, if the Dean of an institution of higher education sits on the COA and the institution's site visit report is being discussed by the COA, that Dean would recuse him or herself and the

Associate Dean or another institutional leader would serve as the representative of the institution during the discussion of the accreditation visit.

The COA could consider whether to include the following (or similar) language reflecting this process in its *Procedures Manual*.

Any member serving on the COA may not represent his or her institution during the discussion of the site visit report or revisit report of his or her institution before the COA. That member should ensure that other institutional leadership attends the COA meeting, as needed, to represent the interests and perspectives of the institution.

Next Steps

Staff recommends discussion of the above proposed language and that that the COA consider approving changes in the *Procedures Manual* to reflect the counsel advice.